IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 872 OF 2004

CONNECTED WITH

COMPANY APPLICATION NO. 484 OF 2004

In the matter of petition under Sections 391 to 394 of the Companies Act, 1956.

And

In the matter of Philips Medical Systems India Private Limited;

And

In the matter of Scheme of Amalgamation of Philips Software Centre Private Limited and Philips Medical Systems India Private Limited with Philips India Limited.

Philips Medical Systems
India Private Limited. .. Petitioners.

Mr. G.R. Joshi i/by Khaitan & Co.
for petitioners.
Mr. C.J. Joy with R.C. Master & M.M. Goswami,

Panel Counsel i/by Dr. T.C. Kaushik
for Regional Director, Dept. of Company
Affairs, Maharashtra, Mumbai.

Mr. S.C. Gupta, Official Liquidator, present.

CORAL : S.U.KAMDAR, J.

DATE : 18th MARCH, 2005.

P.C.

1. The present petition is filed by the petitioner under sections 391 and 394 of the Companies Act, 1956. The amalgamation is proposed between Philips Software Centre Private Limited and Philips Medical Systems India Private Limited and Philips India Limited. Pursuant to the directions of this Court a chartered accountant was appointed who has submitted his report to the official liquidator pointing out various discrepancies in the account maintained by the company. I have considered each of the said discrepancies. In respect of the two of the discrepancies where there were certain doubts, the company was directed to file additional affidavit which they have filed on 16.3.2005. In the said affidavit the issue pertaining to the reduction in the price of the disposal of the property situated at Chennai from Rs. 72 lacs to Rs. 70 lacs is clarified. Another objection pertaining to the interest on loan lent

and advanced to Mr. J. Sunderrajan, it has been explained that the amount is being recovered and the original amount of loan of Rs. 16 lacs has been reduced from time to time and today the balance outstanding is only Rs. 4,15,855/-. In respect of other objections raised by the chartered accountant, I have considered the same. I have also considered the explanation given by the petitioner in their affidavit dated 10.3.2005 and I am satisfied that the explanation furnished by the petitioner gives detailed and proper explanation. In any event none of the objections raised by the Chartered Accountatn reach to a conclusion that the affairs of the company are carried on in a manner which is prejudicial to the public interest.

2. One of the creditors has filed an affidavit raising objection to the said scheme. According to him, he is the creditor to the extent of Rs. 5,79,704/- as an amount outstanding as on 31.3.2004. It is his case that he has delivered the equipment of power supply and for which bill has been raised by him and the petitioner has not made payment in respect thereof. According to him, in respect of the said instrument there were also services given by the creditor for which also there is non-payment. In view thereof, he contends that the scheme should not be accepted till and until his claims are settled. The learned counsel for the petitioner has

drawn my attention to the affidavit in reply filed by the respondent company in so far as the said claim is concerned. The petitioner has filed affidavit on 9.2.2005 and has pointed out in detail that there has been serious dispute by and between the parties in respect of the said claim. It was pointed out that by a letter dated 4.8.2000 the company has pointed out to the said creditor that the goods which are supplied are of defective quality. Even the said creditor has accepted the said fact and has promised to substitute the same by their letter dated 10.7.2001. The relevant portion of the said letter reads :-

> "My request is as follows. Please do not ask us to refund Rs.9.50 lacs at this juncture. We will take back all the four sets and replace them with CONSOLE UPS's. Also, the servos will be painted to match the colour of the UPS. We assure you that we will replace them latest by middle of September, 2001."

In spite of the said assurances, no steps are taken and the material is not replaced. In view thereof, there are serious bonafide disputes and hence the amount is not due and payable. The amalgamation petition cannot be rejected on the said ground. The amalgamation petition under sections 391 to 394 is

not a method by which a creditor can seek adjudication of their claims which are bonafidely disputed by the company. In view thereof, I overrule the objection and grant the petition in terms of prayer clauses (a) to (f).

3. C.C. expedited.